

WILLIAM F. RINGERT ET AL.

IBLA 73-113

Decided August 22, 1973

Appeal from a decision of the Idaho State Office, Bureau of Land Management, denying appellants' applications for desert land entry, and rejecting their petitions to classify the lands.

Affirmed.

Desert Land Entry: Generally

An application for a desert land entry made for land withdrawn by a public land order from all forms of appropriation under the public land laws must be rejected; and it will not be suspended pending restoration of the land from the withdrawal.

APPEARANCES: William F. Ringert, Esq., Anderson, Kaufman, Anderson & Ringert, Boise, Idaho, for appellants.

OPINION BY MR. RITVO

Linda J. Castagneto and five others have appealed from a decision dated August 21, 1972, of the Idaho State Office, rejecting their respective petition-applications, filed on June 9 and July 6, 1972, to classify certain public land for desert land entry on the ground that all the lands were withdrawn under the public land laws. 1/ The decision also refused to hold the applications in suspense pending action on the petition for revocation of the withdrawal, which

1/ The appeal as originally filed listed applications filed by William F. Ringert, Lynn K. Ringert, Billie Dee Noble, Linda J. Castagneto, Craig M. Castagneto, Willard H. Reynolds, Betty L. Reynolds, Richard J. T. Anderson, and Calvin B. Neeley. The applications and appeals of William F. Ringert and Lynn K. Ringert were withdrawn. By Order of the Board of Land Appeals, dated April 13, 1973, this matter was dismissed, as to Billie Dee Noble since she had relinquished her application during the pendency of the appeal.

each applicant had filed with his application. It then stated that the petitions for revocation and restoration, which had been docketed as I-5744, would be considered separately.

The State Office decision pointed out that all of the lands included in the petition-applications were withdrawn from all forms of appropriation under the public land laws, including the desert land laws, for the Saylor Creek Experimental Range Pasture Research Area by Public Land Order 4561, dated December 31, 1968.

The lands are also withdrawn from entry under the nonmineral public land laws by Executive Order 6910, November 26, 1934. Section 7 of the Taylor Grazing Act, 43 U.S.C. § 315f (1970), authorizes the Secretary in his discretion to classify such lands as suitable for and open to entry under the desert land and other laws.

In addition to the regular petition to classify the lands as suitable for entry in accordance with their application (Form 2400-7 (October 7, 1971)), which must be filed for lands withdrawn by E.O. 6910, 43 CFR 2400.0-3, applicants filed a "Petition for Restoration" 2/ requesting the Secretary first to classify the lands as suitable for desert land entry and, in the alternative, to vacate the withdrawal of the lands and return the lands to the public domain for disposition under the general public domain laws.

The decision of the State Office is affirmed. At the time of filing for the desert entries, the subject land had been withdrawn from appropriation under the public land laws. It is well established that where an application for a desert-land entry is made for withdrawn land, the application must be rejected; and it will not be suspended pending restoration of the land from the withdrawal. Harold L. Anderson, 10 IBLA 293 (1973); M. F. Trask, 4 IBLA 252 (1972); David Rasmussen, A-30549 (October 11, 1966); Ernest R. Brassell, A-28096 (October 29, 1959); Leland Odell Whitmore, Sr., A-28719 (August 30, 1961); Edwin L. Doheny, A-26868, A-26897 (July 13, 1954).

The pertinent regulations so provide. The general regulation governing applications, 43 CFR 2091.1, reads:

2/ Appellants have styled their document "Application-Petition for Classification or, in the Alternative, for Revocation of Withdrawal, Restoration to Public Domain and Classification."

* * * applications must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(a) Withdrawal or reservation of the lands.

* * * * *

(e) The fact that for any reason the land has not been made subject, or restored to, the operation of the public land laws.

The desert land regulation, in turn, states that:

* * * In order for land to be subject to desert land entry it must be * * * unreserved [and] unappropriated * * *. 43 CFR 2520.0-7. 3/

The appellants do not contend that the lands applied for are now open to desert land entry. They recognize that the lands are withdrawn under PLO 4561, supra, and, in addition, by Executive Order 6910 (43 CFR 2400.0-3). However, they assert that their petitions for classification can stand independent of their applications for entry and that their petitions should not be rejected pending a decision on their petitions to restore the lands from the withdrawals. Otherwise, they say, they will be denied the preference right given by section 7 of the Taylor Grazing Act, 43 U.S.C. § 315(f) (1970), to an applicant whose application results in a classification of land in accordance with his application. 43 CFR 2450.8.

While we recognize that a petition for classification is a separate document from an application to enter, the pertinent regulation provides that where an application to enter can be filed prior to classification, the application and petition must be filed together and will be referred to as a "petition-application." 43 CFR 2450.1. Thus for the purposes of consideration they are, in effect, a single document. Appellants can gain no rights by attempting to separate the petition for classification from the application for entry that they do not have if they are considered as a unit.

If the only obstacle to allowing appellants' applications were the E.O. 6910 withdrawal, their possible preference rights would not

3/ See also 43 CFR 2511.0-8 (homesteads) and 43 CFR 2322.1 (first form reclamation withdrawals).

be in jeopardy, because they would gain them if the lands were classified in accordance with their petition-application.

However, the basic problem confronting appellants is not that the land requires classification pursuant to section 7 of the Taylor Grazing Act before their applications can be allowed, but that it is also withdrawn pursuant to PLO 4561.

As the cases cited above point out, the Department has long held that applications for lands in a withdrawal (other than one listed in section 7 of the Taylor Grazing Act, supra) will not be suspended pending revocation of the withdrawal.

Appellants' argument that they are not applying for desert land entry but rather are "petitioning for restoration" of the land to the public domain pending classification of the land is not persuasive. In effect, appellants are attempting to do indirectly what the regulations and the cases have determined they cannot accomplish directly, i.e., suspend an application for desert land entry pending final determination of use of the lands.

In a recent case, State of Alaska, 73 I.D. 1, 9, 10 (1966), aff'd Kalerak v. Udall, 396 F.2d 146 (9th Cir. 1968); cert. denied, 393 U.S. 1118 (1969), the Department discussed fully the reasons underlying its policy.

It pointed out that there are two fundamental reasons for the Department's refusal to suspend applications which are filed for lands before they are open to disposition. The first is purely administrative -- that is, by refusing to suspend such applications the Department prevents the public records from being burdened with thousands of applications on which there is no possibility that action can be taken in the foreseeable future. The second reason is equitable -- that is, such refusal prevents an applicant from getting a preference right to which he has no right and assures to all the public equality of opportunity to file after the land becomes available for entry. These considerations are still persuasive.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Joan B. Thompson, Member

